

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>EUGENE G. LEEDY</b>	)	
Claimant	)	
VS.	)	
	)	
<b>ONEOK</b>	)	Docket No. 1,051,906
Self-Insured Respondent	)	

**ORDER**

Respondent appealed the August 19, 2013, Award entered by Administrative Law Judge (ALJ) John D. Clark. The Board heard oral argument on December 3, 2013.

**APPEARANCES**

Lawrence M. Gurney of Wichita, Kansas, appeared for claimant. Karl L. Wenger of Kansas City, Kansas, appeared for respondent.

**RECORD AND STIPULATIONS**

The record considered by the Board and the parties' stipulations are listed in the Award. At oral argument, respondent conceded claimant's left knee meniscus tear and arthroscopic surgery by Dr. John P. Estivo were work related. The parties agreed the Board may consider the *Guides*.<sup>1</sup>

**ISSUES**

ALJ Clark awarded claimant benefits for a left knee injury based upon a 37% lower extremity functional impairment.<sup>2</sup>

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<sup>1</sup> American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

<sup>2</sup> The Award granted claimant permanent partial disability benefits based upon the schedule for a lower leg rather than the schedule for a leg.

Respondent does not dispute that on January 21, 2010, claimant sustained a left knee injury that arose out of and in the course of his employment. However, respondent asserts that as a result of claimant's work accident, he sustained a meniscus tear and that his accidental injury did not cause, aggravate or accelerate claimant's preexisting arthritis. Respondent contends claimant is not entitled to any additional workers compensation benefits because he failed to prove his January 21, 2010, accidental left knee injury caused increased disability beyond the level of his preexisting disability. Respondent requests the Board enter an Award finding claimant is not entitled to any permanent partial disability benefits. Respondent also asserts that whether or not claimant had the January 21, 2010, accident, his preexisting arthritis was going to worsen and eventually he would need a total left knee replacement.

Claimant requests the Board affirm the Award. He also maintains respondent is not entitled to any credit for preexisting impairment because: (1) respondent failed to prove claimant had a ratable preexisting functional impairment and (2) if claimant had a ratable preexisting functional impairment, it was resolved by his left knee replacement.

The issues before the Board on this appeal are:

1. What is the nature and extent of claimant's disability? Specifically, is respondent entitled to a credit for claimant's preexisting left knee condition and should respondent be responsible for the cost of claimant's left knee replacement?
2. Is claimant entitled to future and unauthorized medical benefits?

#### **FINDINGS OF FACT**

After reviewing the entire record and considering the parties' arguments, the Board finds:

On January 21, 2010, claimant was working in a hole filled with mud and ice when he got stuck. He twisted to extricate himself and had immediate pain in the left knee.

Following his accident, claimant underwent three surgeries. On March 23, 2010, Dr. John P. Estivo, an orthopedic surgeon, performed a left knee arthroscopy on claimant. Dr. Estivo testified claimant had an internal derangement of the left knee with a medial meniscus tear caused by the January 21, 2010, accident. Dr. Estivo determined claimant reached maximum medical improvement on April 19, 2010, and pursuant to the *Guides*, determined claimant had a 2% functional impairment to the left lower extremity.

After being released by Dr. Estivo, claimant returned to full duty at work. After a week, claimant's knee began hurting and he eventually returned to see Dr. Estivo. According to claimant, Dr. Estivo "kind of got mad and told me there was nothing he could

do, it was just old age and to buy a good pair of boots.”<sup>3</sup> At the insistence of his wife, claimant went to see his family physician, Dr. Miranda Deluna, who ordered an MRI. The MRI revealed something floating in claimant’s left knee. Claimant’s care was transferred to Dr. John D. Osland, an orthopedic and sports medicine specialist.

On January 19, 2011, Dr. Osland performed arthroscopic surgery on claimant’s left knee. Dr. Osland’s notes indicated, among other things, the following concerning claimant’s left knee:

- a lot of the medial meniscus was removed, but there was some calcification of the posterior horn that was left and the calcified areas were trimmed up;
- there was a large area of bare bone on the medial femoral condyle and corresponding area on the medial tibial plateau;
- a little synovitis, which was trimmed; and
- some grade III wear into the medial facet of the patella, some of which was flaking off and was shaved and smoothed.

Dr. Osland later injected claimant’s left knee with cortisone and a lubricant, but claimant’s pain only increased. On June 20, 2011, Dr. Osland performed a left knee replacement. After claimant reached maximum medical recovery, Dr. Osland, using the *Guides*, assessed claimant with a 37% permanent functional impairment to the left lower extremity, as he had a good result from the left knee replacement.

Claimant previously injured his left knee at work in May 2009. The injury occurred when he was getting out of a crew truck and his foot got hung up in the step and he fell. Claimant was sent to a doctor, where x-rays were taken, he was given some ibuprofen and prescribed a knee brace. He continued to work. He had problems with the left knee, but it got better. Claimant was also treated for this injury by his family physician, Dr. Deluna, who performed some tests to rule out rheumatoid arthritis, which were negative. Other treatment included an injection. Claimant testified that on January 21, 2010, prior to the accident, he was having no problems with his knee.

Dr. Estivo took pictures of claimant’s left knee when performing arthroscopic surgery. The doctor testified the pictures showed areas where there was complete bone exposed on the medial femoral condyle and the medial tibial plateau, which he explained was the end of the femur and the top of the tibia. In a healthy knee, there would be cartilage between the femur and tibia. X-rays prior to January 21, 2010, revealed claimant had left knee degenerative joint disease. Dr. Estivo opined that prior to claimant’s January

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<sup>3</sup> R.H. Trans. at 13.

21, 2010, accident, he had a 50% impairment to the left lower extremity. He used Table 62 of the *Guides* to arrive at that opinion. Dr. Estivo testified Table 62 states that if there are zero millimeters of joint space, there would be a 50% impairment to the lower extremity.

Dr. Estivo last saw claimant on May 24, 2010, which was approximately three years before he testified in this matter. Initially, the doctor testified claimant certainly could have been a candidate for knee replacement surgery when he last saw claimant and that claimant's pain was sufficient to recommend such surgery to him. However, after explaining the indications for a knee replacement surgery, Dr. Estivo admitted claimant was not a candidate for a knee replacement when he last saw claimant. The doctor also admitted he did not recommend a left knee replacement and indicated that claimant's knee pain had not interfered with his ability to work. The doctor acknowledged he had no idea of claimant's current condition or his progress other than the records he received indicating claimant underwent the knee replacement surgery.

Dr. Osland reviewed 2009 x-rays of claimant's left knee and testified that the gap in claimant's left knee had lessened between the time of the x-rays and the time he performed the 2011 surgical procedures. He testified the x-rays did not show a bone-on-bone condition, but showed a narrowing of the joint gap. By 2011, the joint gap had narrowed considerably and was bone-on-bone. Dr. Osland testified claimant had some arthritis on the 2009 x-rays, but it progressed. Dr. Osland testified that prior to January 21, 2010, claimant had a ratable condition for his left knee arthritis, but the doctor was not asked to rate the preexisting condition. The doctor indicated the preexisting ratable condition resolved because of the left knee replacement. Dr. Osland confirmed that not all persons with a bone-on-bone knee need a knee replacement. He explained that pain pushes a person into having a knee replacement and a person can have terrible arthritis, but not much pain.

Dr. Osland testified that, "[O]nce he had failed in all those other things and he had the arthritis in there, then the last option was to do a knee replacement."<sup>4</sup> When asked whether claimant's need for left knee replacement surgery was caused by the work injury, Dr. Osland responded by stating, "Well, it certainly was the -- the need for it was accelerated by it and he may have ended up needing to have the knee replacement whether he had that injury or not, but it certainly accelerated his need for it."<sup>5</sup>

At the request of claimant's attorney, Dr. George G. Flutter examined claimant on November 6, 2012, and using the *Guides*, opined claimant had a 50% functional

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<sup>4</sup> Osland Depo. at 7.

<sup>5</sup> *Id.* at 9.

impairment to the left lower extremity, based upon a fair result from his left knee replacement.

Dr. Flutter did not have claimant's x-rays or MRIs to review, but he had the reports. The doctor reviewed records from Drs. Deluna and Secrist, who treated claimant's left knee in 2009. Dr. Flutter concluded there was nothing in those records to indicate claimant needed a left knee replacement. The doctor acknowledged Dr. Deluna indicated claimant was having some problems with arthritis. According to Dr. Flutter, in 2009, claimant could perform the essentials of daily living.

Dr. Flutter testified that if an x-ray taken of claimant's left knee prior to January 21, 2010, showed a loss of cartilage, that loss of cartilage would be ratable under the *Guides*. The doctor indicated claimant's preexisting ratable condition resolved because of the left knee replacement. Dr. Flutter explained that under the *Guides*, measurements would have to be taken in millimeters to determine the loss of cartilage. Dr. Flutter indicated that if a person had a complete loss of cartilage, he or she would have a 50% functional impairment to the lower extremity.

Based upon the chronology of claimant's January 21, 2010, accident and events thereafter, Dr. Flutter opined there was a causal relationship between claimant's need for a left knee replacement and his January 21, 2010, accident. The doctor opined that it was more likely true than not that the trauma of the January 21, 2010, injury brought about the sequelae that brought about the need for claimant's left knee replacement. Dr. Flutter testified that a person who has a bone-on-bone knee is not always a candidate for knee replacement surgery. A person may have significant arthritis and have minimal pain and can function, so surgery is not necessary.

ALJ Clark found claimant had a 37% functional impairment to the left lower extremity and stated in the Award:

This Court finds that the opinions of Dr. Osland are the most persuasive. Dr. Estivo's opinions don't take into account the knee replacement surgery, as his opinion was that the bone-on-bone preexisted the injury that is subject to this litigation and the torn meniscus gives the Claimant a two percent. As stated, the Court adopts the opinions of Dr. Osland, one of the Claimant's treating physicians, and finds that the Claimant has a 37 percent impairment to his left lower extremity.<sup>6</sup>

#### **PRINCIPLES OF LAW AND ANALYSIS**

Respondent does not contest that after claimant's left knee replacement he had a 37% functional impairment. Instead, respondent contends that prior to claimant's

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<sup>6</sup> ALJ Award at 4.

January 21, 2010, accident, he had a 50% functional impairment and, therefore, claimant's work accident did not cause claimant to have an increased functional impairment. Respondent cites *Wilder*<sup>7</sup> in support of its position.

Claimant counters with three arguments: (1) respondent failed to prove claimant had a ratable preexisting left knee functional impairment; (2) *Wilder* is distinguishable from the current claim; and (3) if claimant had a ratable preexisting functional impairment, it was resolved by his left knee replacement.

K.S.A. 2009 Supp. 44-501(c) states:

The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting.

The Workers Compensation Act places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that right depends.<sup>8</sup> "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."<sup>9</sup>

While claimant has the burden of proving the conditions establishing an award for compensation, it is the respondent's burden to prove claimant has a preexisting functional impairment. In *Kirker*,<sup>10</sup> the Kansas Court of Appeals stated:

For an award to be reduced by an amount of preexisting functional impairment, the current injury must constitute an aggravation of the preexisting condition. *Lyons v. IBP, Inc.*, 33 Kan. App. 2d 369, 379, 102 P.3d 1169 (2004). Once it is established that the current injury is an aggravation of the preexisting injury, the respondent has the burden of proving the amount of preexisting impairment to be deducted. *Hanson v. Logan U.S.D.* 326, 28 Kan. App. 2d 92, 95, 11 P.3d 1184 (2000), *rev. denied* 270 Kan. 898 (2001). This determination must be based upon the AMA Guides to the Evaluation of Permanent Impairment (4th ed. 1995). K.S.A. 44-510d(a)(23); *Criswell v. U.S.D.* 497, No. 104,517, 2011 WL 5526549, at \*6-\*7

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<sup>7</sup> *Wilder v. City of Topeka*, Nos. 1,001,649 & 1,004,830, 2005 WL 3030738 (Kan. WCAB Oct. 28, 2005).

<sup>8</sup> K.S.A. 2009 Supp. 44-501(a).

<sup>9</sup> K.S.A. 2009 Supp. 44-508(g).

<sup>10</sup> *Kirker v. Bob Bergkamp Construction Co., Inc.*, No. 107,058, 2012 WL 4937471 (Kansas Court of Appeals unpublished opinion filed Oct. 12, 2012).

(Kan. App. November 10, 2011) (unpublished opinion), *pet. for rev.* [denied February 4, 2013].

Drs. Estivo, Osland and Flutter agreed that prior to his January 21, 2010, work injury, claimant had a ratable left knee condition. Only Dr. Estivo provided a functional impairment rating for claimant's preexisting left knee condition, which was 50%. The doctor indicated that photos taken during the arthroscopic surgery he performed on claimant depicted claimant's left knee as bone-on-bone.

The Board finds questionable Dr. Estivo's opinions that claimant's left knee was bone-on-bone and claimant had a 50% preexisting left lower extremity functional impairment. Dr. Estivo admitted that when he last saw claimant, which was May 2010, claimant was not a candidate for a knee replacement and he did not recommend a left knee replacement. Moreover, Dr. Estivo testified approximately three years after he last saw claimant. Since then, claimant received treatment from and underwent a complete left knee replacement by Dr. Osland. In arriving at his opinion, Dr. Estivo relied on photos of claimant's left knee taken during his left knee arthroscopic surgery. Table 62 of the *Guides* requires that arthritis impairments be based upon roentgenographically determined cartilage intervals.

Dr. Osland disputed Dr. Estivo's assertion that claimant was bone-on-bone at the time of the January 21, 2010, accident. Dr. Osland testified claimant's 2009 x-rays did not show a bone-on-bone condition, but showed a narrowing of the joint gap. When Dr. Osland saw claimant in 2011, the joint gap had narrowed considerably and was bone-on-bone. Dr. Osland indicated claimant's knee condition was accelerated by the injury suffered on January 21, 2010. Moreover, Dr. Osland more recently treated claimant. The Board finds the opinions of Dr. Osland more credible than those of Dr. Estivo.

The Board concludes claimant had a ratable left lower extremity permanent functional impairment prior to his accident. As stated above, the Board finds Dr. Estivo's opinion that claimant had a preexisting 50% left lower extremity functional impairment is not credible. That leaves the Board with no rating expressed in a percentage for claimant's preexisting left lower extremity functional impairment. Consequently, respondent has failed to prove the amount of claimant's preexisting functional impairment.

K.S.A. 44-510d(a)(23) provides:

Loss of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.

The *Guides* provides at page 1/1:

In the *Guides*, impairments are defined as conditions that interfere with an individual's "activities of daily living," some of which are listed in the Glossary (p. 315). Activities of daily living include, but are not limited to, self-care and personal hygiene; eating and preparing food; communication, speaking, and writing; maintaining one's posture, standing, and sitting; caring for the home and personal finances; walking, traveling, and moving about; recreational and social activities; and work activities.

K.S.A. 44-510e(a) provides, in part:

Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.

The Board also notes that despite having some left knee symptoms and conservative treatment prior to January 2010, claimant was able to perform his regular job duties. Claimant testified that at the time of his January 2010 accident, he was having no problems with his left knee. While claimant may have had left knee pain and received treatment for his left knee prior to his accident, there is little evidence that prior to the accident claimant's left knee condition interfered with his activities of daily living. Nor is there sufficient evidence to establish that claimant had a loss of physiological capability as the result of his preexisting left knee condition.

Respondent likens this claim to that of *Wilder*.<sup>11</sup> In *Wilder*, claimant alleged he injured his right knee in January and June 2002 work-related accidents. The ALJ found Wilder aggravated a preexisting degenerative condition in his right knee as a result of a June 21, 2002, accident. However, the ALJ further determined Wilder had a 50% preexisting impairment to the right knee before he suffered accidental injury, and after knee replacement surgery, according to the *AMA Guides*, Wilder suffered a 37% functional impairment to his right knee. Consequently, the ALJ denied Wilder permanent partial disability benefits because the work-related accident did not increase Wilder's preexisting functional impairment.

Wilder testified that in December 2001, approximately six months prior to his June 2002 work accident, he had been told he needed a right knee replacement by Dr. Jeffrey Conrow. X-rays taken in 2000 revealed claimant's right knee was bone-on-bone. Dr. Edward J. Prostic, who examined Wilder at his attorney's request, agreed that if there is bone-on-bone with no cartilage interval, the rating is 50% to the knee and if there is a good result with arthroplasty, the rating is reduced to 37% according to the *AMA Guides*.

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<sup>11</sup> *Wilder v. City of Topeka*, Nos. 1,001,649 & 1,004,830, 2005 WL 3030738 (Kan. WCAB Oct. 28, 2005).



Dr. Prostic further agreed that if surgery had already been prescribed, a twisting event to the knee would not accelerate the need for surgery. Dr. Joseph Mumford indicated that before Wilder's work-related accidents, x-rays had revealed bone-on-bone in his right knee and that under the *AMA Guides*, such condition was ratable as a 50% functional impairment.

The Board affirmed the ALJ, stating:

The Workers Compensation Act provides that if an accident aggravates a preexisting condition the injured worker's recovery is limited to the extent the injury causes increased disability. Moreover, compensation awards must be reduced by the amount of preexisting functional impairment when the injured worker aggravates a preexisting condition. The Act reads:

The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting. [Footnote citing K.S.A. 44-501(c) (Furse 2000).]

And functional impairment is defined by K.S.A. 44-510e(a), as follows:

Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.

K.S.A. 44-510e(a) requires that functional impairment be determined based upon *AMA Guides*, Fourth Edition. The Board has held that any preexisting functional impairment must also be determined utilizing the same criteria and this approach has been upheld by the Court of Appeals. [Footnote citing *Leroy v. Ash Grove Cement Company*, No. 88,748 (Kansas Court of Appeals unpublished opinion filed April 4, 2003).] The Act neither requires that the functional impairment be actually rated before the subsequent work-related accident nor that the worker had been given work restrictions for the preexisting condition. Instead, the Act only requires that the preexisting condition must have actually constituted a ratable functional impairment.

Under the unique factual circumstances of this case, both Drs. Prostic and Mumford noted that before the claimant's work-related accidents x-rays had revealed bone on bone in his right knee. Both doctors agreed that under the *AMA Guides* such condition was ratable as a 50 percent functional impairment. And both doctors as well as Dr. Bieri, the court ordered independent medical examiner, agreed that following a surgical total knee replacement, the claimant's right knee rated a 37 percent functional impairment pursuant to the *AMA Guides*.

Consequently, the claimant's discrete injuries to his right knee did not result in any increased disability and the Board affirms the ALJ's finding claimant is not entitled to any additional permanent partial disability compensation.

Respondent next argues that because the total knee replacement had not only been recommended but also agreed to by claimant before the work-related accidents, such surgery was not caused by the accidents. Consequently, respondent further argues it should not be liable for the claimant's right knee surgery. The Board agrees.

Knee replacement surgery had been recommended before the first accident in January 2002. And claimant never sought treatment for that particular incident. Claimant then sought treatment in May 2002 and again knee replacement surgery was recommended and agreed to by claimant. In June 2002 claimant again suffered two discrete twisting type injuries to his right knee. All three of claimant's injuries to his right knee were described as twisting incidents. As previously noted, Dr. Prostic agreed claimant's twisting injuries to his right knee did not accelerate the need for claimant's knee replacement surgery which had already been recommended and agreed to by claimant. Based upon this record it cannot be said that the claimant's work-related knee injuries accelerated, intensified or aggravated the knee condition to the extent that surgery was required. Such surgery had already been recommended and agreed to by claimant. Consequently, respondent's liability under these claims is limited to the medical treatment for the temporary aggravation to claimant's right knee suffered following the injuries in June 2002 but respondent is not liable for the expenses of claimant's right knee replacement surgery.<sup>12</sup>

The Board finds the facts in the current claim are distinguishable from *Wilder*. In the current claim, prior to claimant's accident, he was never told by a physician that he needed a left knee replacement. Dr. Estivo indicated that when he saw claimant in May 2010, claimant was not a candidate for a left knee replacement. Dr. Osland indicated claimant's 2009 x-rays showed claimant had some knee cartilage. In *Wilder*, a physician told claimant before his work accident that he needed a knee replacement.

Wilder's own expert, Dr. Prostic, admitted Wilder's work injuries did not accelerate his need for a knee replacement. In the present claim, Dr. Osland testified claimant's need for surgery was accelerated by his January 2010 work injury. Prior to his accident, Wilder clearly had a functional impairment as defined by K.S.A. 44-510e(a) as he had a loss of a portion of his physiological capabilities. In the present claim, there was little evidence that prior to his accident, claimant sustained a loss of a portion of his physiological capabilities.

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<sup>12</sup> *Id.*

In light of the foregoing findings, the Board will not address claimant's contention that if claimant had a ratable preexisting functional impairment, it was resolved by his left knee replacement. However, the Board would note that it finds little merit in that argument.

The Board affirms the ALJ's finding that claimant sustained a 37% functional impairment to the leg at the level of the knee. Dr. Osland was claimant's treating physician and is in a better position to evaluate the nature and extent of claimant's left knee functional impairment than Dr. Fluter, who saw claimant only once.

Dr. Osland indicated claimant's accident accelerated his need for a knee replacement. Under the Kansas Workers Compensation Act that was in effect prior to May 15, 2011, because the need for claimant's left knee replacement was accelerated by his accidental injury at work, respondent is required to bear the cost of claimant's left knee replacement.

Respondent asserts claimant is not entitled to future and unauthorized medical benefits. This was not addressed in respondent's brief. At oral argument, respondent acknowledged the basis of this assertion was that the nature and extent of claimant's left knee injury was limited to the meniscus tear. Based upon the above findings, the Board finds claimant is entitled to unauthorized medical benefits up to the statutory maximum and to apply for, and if approved, receive future medical benefits. At the time of claimant's injury, the law stated that a claimant maintained a right to future medical benefits even when there was no evidence of a continuing need. See *Ferrell v. Day & Zimmerman, Inc.*, 223 Kan. 421, 423, 573 P.2d 1065 (1978); *Boucher v. Peerless Products, Inc.*, 21 Kan. App. 2d 977, 983, 911 P.2d 198, rev. denied 260 Kan. 991 (1996).

### CONCLUSION

1. Claimant, as a result of his January 21, 2010, accident, sustained a 37% functional impairment to the left lower extremity.

2. Respondent failed to prove the amount of claimant's preexisting permanent left knee functional impairment, if any.

3. The need for claimant's left knee replacement was accelerated by his January 21, 2010, accident and respondent is responsible for the cost of the left knee replacement.

4. Claimant is entitled to unauthorized medical benefits up to the statutory maximum. Upon proper application to the Director, claimant may be entitled to future medical benefits.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.<sup>13</sup> Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

**AWARD**

**WHEREFORE**, the Board modifies<sup>14</sup> the August 19, 2013, Award entered by ALJ Clark as follows:

Eugene G. Leedy is granted compensation from ONEOK for a January 21, 2010, accident and resulting disability. Mr. Leedy is entitled to receive 13 weeks of temporary total disability benefits at \$546 per week, or \$7,098, followed by 69.19 weeks of permanent partial disability benefits at \$546 per week, or \$37,777.74, for a 37% loss of use of the left leg, making a total award of \$44,875.74, all of which is due and owing, less amounts previously paid.

Should claimant's counsel desire attorney fees be approved in this matter, he may submit that matter to the ALJ.

The Board adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 2014.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

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<sup>13</sup> K.S.A. 2012 Supp. 44-555c(k).

<sup>14</sup> The Award calculated claimant's permanent partial disability as though claimant sustained a scheduled lower leg functional impairment when in fact, pursuant to K.S.A. 44-510d, claimant sustained a functional impairment to the leg.

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Honorable John D. Clark, Administrative Law Judge